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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/733,748	12/11/2003	Brad Bivens	1505800-050745	8409
23570	7590	10/05/2005		
PORTER WRIGHT MORRIS & ARTHUR, LLP INTELLECTUAL PROPERTY GROUP 41 SOUTH HIGH STREET 28TH FLOOR COLUMBUS, OH 43215			EXAMINER FASTOVSKY, LEONID M	
			ART UNIT 3742	PAPER NUMBER

DATE MAILED: 10/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/733,748	Applicant(s) BIVENS ET AL.	
	Examiner Leonid M. Fastovsky	Art Unit 3742	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 July 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 and 17-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15 and 17-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-9 and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Wengler et al (4,352,707).

Wengler teaches a heater assembly (Fig. 1-3) comprising a first and second flexible layers 10 and 24 of the diaphragm 10, at least one flexible electric heating element 40 positioned between the first and second layers and forming first, second and third heating zones 44, 45 and 46, and wherein the flexible heating element 40 provides non-uniform heating as desired (col. 3, lines 47-63) and comprises bundled resistive wires knitted into a desired form (Fig. 3).

As for claims 4-9, Wengler teaches the first, second and third heating zones that are concentric circles and have different watt density and the flexible heating elements comprises three heating elements that are connected in series

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 10 and 17-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wengler in view of Higgins.

Wengler discloses substantially the claimed invention, but does not disclose a fourth heating zone. Higgins discloses a flexible heating element comprises two heating elements 16 and 18 electrically connected in series, have concentric heating zones, and the heating element 18 inherently has a higher watt density than the element 16, and a third heating element 20 with a third heating zone and a fourth heating element 22 with a fourth heating zone (Fig. 1-2). It would have been obvious to one having ordinary skill in the art to modify Wengler's invention to include the fourth heating zone as taught by Higgins in order to generate variety of non-uniform heating zones as required by the user.

5. Claims 11 -15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wengler in view of Lowery et al (3,875,373).

Wengler discloses substantially the claimed invention, but does not disclose a silicon rubber and insulating layer. Lowery discloses a vacuum heated pad 10 comprising a flexible resilient body 13 made of silicone (col. 2, lines 59-69), having a heating element 15 and an insulator layer 16 comprised silicone -rubber (col. 3, lines 1-6). It would have been obvious to one having ordinary skill in the art to modify Wengler's invention to use silicon for layers and a silicon-rubber insulation as taught by Lowery as one of the commonly used materials in the art for durability.

Response to Arguments


6. Applicant's arguments with respect to claims 1-15 and 17-20 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Leonid M Fastovsky whose telephone number is 571-272-4778. The examiner can normally be reached on M-Th. 8.00 am -6.00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robin Evans can be reached on 571-272-4777. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

lmf



Leonid M Fastovsky
Primary Examiner



Leonid M Fastovsky
Examiner
Art Unit 3742

9/29/05